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DRAFT REPORT OF THE INTERNATIONAL LAW COMMISSION
ON THE WORK OF ITS FORTY-NINTH SESSION

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CHAPTER V

RESERVATIONS TO TREATIES

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- B. Consideration of the topic at the present session

105 bis. The Commission considered the report of the Drafting Committee at its 2509th, 2510th and 2511th meetings, held on 10, 11 and 14 July 1997, and adopted preliminary conclusions on reservations to normative multilateral treaties, including human rights treaties, the text of which is reproduced in section C below.

106. With regard to the form of the text, some members expressed doubts about the somewhat unusual procedure adopted by the Commission in dealing with the text submitted to it. They argued that the procedure was premature at the present stage of the Commission's work on the topic. In their view, the text crystallized positions which were not yet entirely clear-cut and which might subsequently be changed. However, several members endorsed the idea that, given the advisability of submitting specific results of the Commission's work and in view of some recent questions about the exact role of the monitoring bodies of certain human rights treaties, the Commission was fully justified in adopting a position. Precisely in order not to prejudge any future orientations or conclusions, the Commission decided that the text should be entitled "Preliminary conclusions".

107. Some members stressed that they disagreed with the principle stated in paragraph 5 that, in order to carry out the functions assigned to them, the monitoring bodies established by treaties were competent to comment upon and express recommendations with regard, inter alia, to the admissibility of reservations. They referred to certain bodies established by treaties in a regional context which might have members from States that were not parties to the treaties establishing the bodies in question. They were also not convinced that paragraph 12, a "saving clause" on regional bodies, was enough of a counterweight to the principle enunciated in paragraph 5.

108. Without going into the substance of the issue, other members took the view that paragraph 12 was broad enough to cover all cases of rules and practices developed within regional contexts.

109. Some members expressed their concern about paragraph 12, which could give rise to divergent interpretations. They took the view that any differentiation between certain reservations regimes in regional contexts was the consequence of the Vienna regime, which had to be considered generally applicable, even though results might not always be the same. They also stated that

paragraph 12 should not be understood as authorizing States to apply conventions of a universal character, particularly in the human rights field, in a differentiated and "regionalized" way.

110. They pointed out that the regional regimes in operation could not be viewed as separate from universally recognized practices and rules.

111. Other members expressed the concern that paragraph 12 might establish a hierarchy of rules and practices within which regional rules would take precedence over universal rules. They were of the opinion that respect for the Vienna Conventions should be established without ambiguity. According to one point of view, the paragraph could be deleted because nothing in the preliminary conclusions was contrary to regional rules and practices.

112. Other members were in favour of the retention of paragraph 12, which they regarded as essential to the balance of the conclusions as a whole. They pointed out that the wording of the paragraph was completely neutral and could not be construed as the adoption of a position on regional practices.

113. In their view, the 1969 Vienna Convention contained nothing peremptory or "sacrosanct", as was, moreover, clearly demonstrated by its residual nature. It was also noted that paragraph 12 left the door open, prejudging neither individual opinions nor the Commission's future positions in that regard.
